



*State and Consumer Services Agency – Arnold Schwarzenegger, Governor*

**BOARD OF BARBERING AND COSMETOLOGY**

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## **MEETING OF THE BOARD OF BARBERING AND COSMETOLOGY**

### **MINUTES OF FEBRUARY 15, 2009**

**Department of Consumer Affairs  
1625 North Market Blvd.  
Sacramento, CA 95834**

#### **Additional Meeting Location:**

**2405 Kalaniana'ole Ave., PH-11  
Hilo, HI 96720**

#### **BOARD MEMBERS PRESENT**

**Jerry Tyler, President  
Richard Hedges, Vice President (via phone)  
Deedee Crossett  
Frank Lloyd  
Ken Williams**

#### **STAFF MEMBERS PRESENT**

**Kristy Underwood, Executive Officer  
Denise Johnson, Ass't Executive Officer  
Gary Duke, Staff Counsel  
Theresa Rister, Admin. Analyst**

#### **1. Agenda Item #1, CALL TO ORDER/ROLL CALL**

Mr. Tyler called the meeting to order at 10:00 a.m. The board members and staff members present introduced themselves.

#### **2. Agenda Item, #2, Board Member's Reports**

Mr. Williams reported he was keeping his students informed. He noted the Board has been more visible and commended the Licensing Division.

Mr. Tyler spent a lot of time visiting beauty schools and colleges. He continues to write for California Stylist Magazine and other publications.

Mr. Hedges attended some outreach events and continued work on the DRC committee.

**3. Agenda Item #3, Election of Officers**

Mr. Lloyd nominated Jerry Tyler for President. It was seconded by Mr. Hedges and approved by a 5-0 roll call vote. Mr. Tyler nominated Mr. Hedges for vice president. Mr. Lloyd seconded the motion and it was approved by a 5-0 roll call vote.

**4. Agenda Item, #4, Executive Officer's Report**

Ms. Underwood reported they have not yet received word from the Governor's office regarding any new appointments to the board. They should be received by April.

Ms. Underwood reported the new laws and regulations have been finalized and a prototype was passed out to the board. They will also be printed in Spanish and Vietnamese. The Self Inspection sheet has also been approved and translated. The inspectors will hand them out and they will be available on the website. The office has been affected by Furlough Friday which impacts their workload.

Staff has continued to meet with the California Healthy Nail Salon Collaborative. Monthly conference calls are held to keep communication open with current issues in the industry.

Ms. Underwood discussed how instrumental staff has been to improve the quality of the work. She recognized various staff members in attendance.

Mr. Hedges and Mr. Lloyd commended staff for improving the efficiency of the DRC.

**5. Agenda Item #5, Discussion on Future Board Committees**

Ms. Underwood recommended conducting committees on an ad hoc basis to discuss certain issues. Most issues would be discussed as a full board and not in committees, other than the DRC. Mr. Hedges believed there were many important issues in the legislature and meetings should be held at least quarterly. He agreed the two day format was cumbersome and preferred to have the committee meetings on the same day as the board meeting. Mr. Williams and Ms. Crossett agreed with the ad hoc format and the full discussion by the board. Mr. Lloyd wondered if it would get cumbersome to discuss issues by the entire board. Ms. Underwood explained the committees would not exist in the future and the issues would be discussed by the full board. Mr. Hedges wondered about the legislative committee to meet with the legislators. Ms. Underwood believed it would be an ad hoc committee to be called together as needed. The agenda would determine if a meeting would be scheduled for 2 days. Mr. Tyler agreed with the flexibility of the ad hoc committees. Mr. Lloyd made the motion to do away with the standing committees other than the DRC. It was seconded by Ms. Crossett and approved by a 5-0 roll call vote.

## 6. Review and Update the Board Member Guidelines, and Procedure Manual

The policy and procedures were presented to the board. They were previously approved and now ready for an update. Mr. Duke explained since the sunset the terms were re-established; this would be considered Mr. Tyler's first term as president. Mr. Duke commented on page 15, Travel Procedures. An issue regarding per diem at a function has recently arose. It was determined it would be up to the president's discretion to determine if a member is acting on behalf of themselves or on behalf of the board. Mr. Tyler and Ms. Underwood should both be notified. Ms. Crossett asked Mr. Duke for clarification on an issue that happened at the last board meeting. Someone left hand sanitizer and lotion for each Board Member, was this appropriate? Mr. Duke stated it was inappropriate. Mr. Hedges made the motion to readopt the current operating procedures. Mr. Tyler seconded the motion and it was approved by a 5-0 roll call vote.

## 7. Agenda Item #7, Approval of Meeting Minutes:

- **April 20, 2008 – Board Meeting:** Upon a motion by Mr. Lloyd, seconded by Mr. Hedges, the minutes were approved by a 5-0 roll call vote.
- **April 21, 2008 – Board Meeting:** Upon a motion by Ms. Crossett, seconded by Mr. Tyler, the minutes were approved by a 5-0 roll call vote.
- **November 18, 2008 – Advisory Committee Meeting:** Ms. Crossett did not believe she recommended the 8 hour video course. Mr. Hedges suggested removing the sentence, "Ms. Crossett recommended the 8 hour video course...issues." Mr. Hedges made the motion to accept the meeting minutes as corrected. Mr. Williams seconded the motion and the minutes were approved by a 5-0 roll call vote.

## 8. Agenda Item #8, Review Board Statistics

Ms. Underwood reviewed the board statistics.

- **Licensing and Examination Program:** Charts were presented outlining the statistics and comparing 2007 and 2008. It was noted less applications were received in 2008. The average days to issue the license has decreased. It was not found that enrollment was down. Ms. Crossett believed it depends on accredited or non-accredited schools. Ms. Crossett noted the numbers were low for the exams and wondered if the exam should be checked to be sure the answers to the questions were in the revised textbooks. Ms. Underwood explained the exam is based on occupational analysis. Mr. Hedges believed the national exam was updated on a regular basis.
- **Disciplinary Review Program:** A review of the scheduled hearing dates were looked at. Mr. Hedges asked if the May date had changed? Ms. Meza stated all dates have been confirmed, except for May, which was currently being looked at. Ms. Underwood briefly reviewed the graphs and noted it also included written testimony.

- **Enforcement Program:** Ms. Underwood reviewed the enforcement stats. An attachment was included, which further described types of consumer harm complaints the Board received. Ms. Crossett suggested this be put on the web. Ms. Underwood mentioned we currently have the top 10 violations listed on the board's website. Ms. Underwood confirmed 6 new inspectors have been hired for a total of 19 and 3 additional vacancies to fill.

**9. Agenda Item #9, Budget Update**

Ms. Underwood discussed the current budget. The year end balance was projected, which included ongoing changes and multiple events. She announced the budget was very stable.

**10. Agenda Item #10, Proposed Regulations Update**

- **Curriculum**

The regulation packages that were being worked on were presented. The cosmetology and esthetician curriculum was recently approved and will become effective February 27, 2009. The barbering, manicuring and extern curriculum is currently being worked on. Ms. Crossett hoped it would address the way schools were tracking time in operations and theory. Mr. Williams recommended the schools be given suggestions on how to track and placed on the website. Ms. Underwood noted staff could do research and provide a recommendation. Mr. Hedges had concerns with obtaining the hours, he believes we will not have control of timesheets until we gain total control of schools. Future items include fine schedule, health and safety update and building standards. Current regulations reflect older code sections.

Public Comment:

Fred Jones, Professional Beauty Federation of California, noted the curriculum was somewhat flexible based on a student's needs. He believed time tracking can be fabricated, and the state board should not undermine the flexibility. He recommended allowing the industry to step up and develop a proof of training form. Producing an industry wide form, that would prevent selling of hours and registering with the State Board.

Mary Ann Haley from Solano Community College, expressed her concern about the requirements for the instructors license.

A female member of the audience wondered if students would be grandfathered in after a curriculum change. Ms. Crossett suggested keeping the current students where they were at. The new curriculum should include your new group of students.

At this point, the meeting adjourned for a ten minute break.

**11. Agenda Item #11, Review and Approval of Regulatory Changes to DRC Membership**

Ms. Underwood discussed the proposed regulatory language that would strike out that DRC members must be current members of the board. Staff recommended the changes in the language so that the board president could appointment members to the DRC. Mr. Tyler noted the DRC consisted of industry members and required time to be efficient. Ms. Crossett agreed the committee required time and continuity. Mr. Williams agreed the DRC needed competent people to cover the number of appeals to keep the timeframes down. He agreed Mr. Tyler should be given the opportunity to appoint new members of the DRC. Mr. Lloyd believed it would be a good idea to have a northern and southern committee. However, they would need to be consistent and very well informed. Ms. Underwood noted the change in regulation would allow it to happen but would not be required. More inspectors are resulting in more appeals and larger fines. Mr. Tyler noted the regulation allows some options if needed. Mr. Hedges believed the regulation was too loose. He believed the president should have the option to appoint but it should include at least one public board member on the committee. He recommended the regulation, Section E, say the board president in consultation with the executive officer or acting executive offer, appoint disciplinary review committees and their members, and to select the dates and locations of the informal citation hearings. Mr. Hedges noted he was willing to attend more hearings to lessen the backlog. Mr. Hedges proposed a resolution to accept the current specific language in the underlined changes with the following changes: The board president shall select a date and location of a formal citation review hearings held before the Disciplinary Review committee. C) The board president may appoint multiple disciplinary review committees that also includes at least one public board member. Mr. Williams believed the problem was two-pronged. 1) There was not a full board to pull DRC members from. He agreed additional DRC members were needed but they would have to be thoroughly trained. It is already burdensome to those that are already trained. It was noted without the state budget, the committee was unable to travel to southern California for 4 months. Mr. Williams noted since it was not known when they would get new board members, that the regulation was important to allow additional people to be appointed to the DRC. Ms. Crossett noted the regulation would take a year to be in effect. She recommended the issue be discussed again when there was a full board. All agreed continuity was very important. However, Mr. Tyler noted only one more industry member would be appointed to the board. Mr. Duke noted the regulation allows for the broadening of the DRC. He recommended staff work with Mr. Hedges to provide some alternatives. Mr. Lloyd recommended the regulation note in the event an alternative cannot be appointed from the board that the president had the authority to appoint someone not on the board. Ms. Crossett made the motion to postpone the issue until there was a full board. Mr. Hedges withdrew his motion and seconded Ms. Crossett's motion. It was approved by a 5-0 roll call vote.

**12. Agenda Item #12, Review and Approval of School Approval Regulations**

The proposed regulations will expand the board's authority on approval of schools. An addition is the establishment of a fee of \$500, and a renewal fee of \$500. There is currently no fee. Upon approval, the regulatory process will begin and include public hearings. Mr. Hedges wondered if Section (b) would be burdensome on the staff (no change from original); section (c), should include location (included in section 941.6);

Inspections of financial statements (no authority to review). Mr. Hedges wondered if that authority should be sought. Mr. Duke confirmed this regulation would be sufficient to give the board authority over the schools. Additional legislation would need to be done to assist students impacted by bad school practices. There was no way with the current legislation to require the schools to be bonded. It was noted the schools would fall under the accreditation policy for the Department of Education to refund students. Ms. Crossett believed this was covered by the accrediting agencies and the board would not need to be involved. The accrediting agency had the authority to review the school's financial records to determine if they were financially stable. The regulation applies to all schools to comply with the refund tables. Mr. Duke noted all schools were looked at the same regardless of their accrediting agency. The refund policy only worked when a school was financially stable. Mr. Williams believed the board was in the best position to regulate schools and require a security bond for liability. All agreed consumer protection was important and schools must be held to a standard of financial stability. Mr. Duke reiterated the board did not have the authority to review financial statements, however, they did have the authority to create ground rules for documentation and compliance with the refund tables. The board's ultimate authority is the ability to terminate approval. The school may continue to operate illegally, which would lead to applicants having trouble qualifying to take the examination. The regulation would allow the board to follow up with complaints and possibly withdraw approval. Mr. Tyler wondered if a timeframe could be established for a school to become accredited. Mr. Duke noted the board did not have authority to require accreditation. Mr. Hedges hoped inspection of timecards could be added to the regulations. Mr. Duke agreed. Ms. Crossett agreed but believed it may look good in theory but hard to inspect on paper. All agreed the proposed regulation was a good first step and a good way to start the process. Mr. Hedges made a motion to approve the proposed changes to Section 941 of Article 6. Mr. Lloyd seconded the motion.

Public Comment:

Fred Jones expressed concerns over the board's proposed statutory authority. The PBFC believes the board has the most leverage to hold schools accountable to their students, even with a new BPPVE. They believed the board should have sole oversight. However, the board was required to approve current applicants who stated they would adhere to the current curriculum, had 25 enrolled students and the inspectors say they had the necessary equipment and floor space. The board nor any state agency will be able to look at the finer points of financial stability. The PBFC believed "within 30 days of enrollment a school is required to register the students name with the board," should be added. He believed the title should remain at "Approval of Schools." He was also concerned about accomplishing the approval/disapproval in ten days. However, it should be clarified this meant receipt of all documents pending approval. He wondered if the regulation would be dismissed if a new BPPVE were established, and if so, the \$500 fee may be too high. However, he noted if there was no new BPPVE, the fee of \$500 was way too low. He reiterated the board should be the sole oversight. He noted "unless somebody can look at student contracts and protect students, no school should be approved." He stated California schools were in limbo and needed firm oversight over existing schools and comprehensive review of new schools.

Ms. Underwood clarified they had 3 complete pending applications in the office. They will be reviewed and potential approvals will be issued based on existing requirements.

Mr. Hedges' amended his motion to include incorporation of board comments including clarification of the 10 day acknowledgement and review of student contracts. It was approved by a 5-0 roll call vote.

**13. Agenda Item #13, Discussion on Developing Qualifications for an Establishment License Owner Who Does Not Hold a Personal License:**

Mr. Lloyd mentioned the qualifications would be for the owner obtaining an establishment license who does not hold a personal license. He also believes the inspectors see the owner as a licensee. Ms. Crossett suggested obtaining 20 additional hours in health and safety. Mr. Tyler believed the establishment license would educate the owners. Mr. Duke wondered if the board was more interested in a manager's license since some establishments are owned by corporations and not individuals. Mr. Tyler stated this may be difficult with relocating managers. It may be difficult to find another manager and during that time the establishment would not be in compliance. All agreed continuing education was important for an establishment owner who did not possess a personal license. Mr. Williams believed the establishment licensed needed to prove a minimal level of competency to ensure they understood the rules and regulations. Mr. Hedges made the motion that staff provide some requirements to discuss. It was seconded by Mr. Lloyd. The motion was approved by a 5-0 roll call vote.

Public Comment

Gary Federico noted he wanted to open a café inside his school. The manager was required by the food industry to complete 8 hours of schooling, read a book and pass the test related to the laws. The manager earned a certificate that signified they passed the course.

Fred Jones of PBFC believed the key was "establishment". The person with operational control needed to be more responsible. He did not believe the landlord could be held accountable because the IRS could consider it an employee/employer relationship. He recommended denoting if a person was a subcontractor or an employee. The PBFC will be working on a proposal that the landlord will be removed from liability if each of their booth renters had their own professional and personal liability insurance. The violations of the licensees would not apply to the landlord. Common areas may be a problem.

Linda Flores of CCA agreed with Mr. Jones' comments regarding booth renters. She also indicated, this idea had come up back in the 80's and was proposed to the legislatures during that time. She agreed the booth renters needed to be identified.

**14. Agenda Item #14, Discussion on Administrative Fine Schedule.**

Mr. Lloyd noted an establishment would be charged \$1,000 for an expired license, and each person working in that establishment would also be charge \$1,000. This was a common issue in DRC. Most people said they did not know they needed an establishment license and were not informed by their city what else they needed. Fines for spa tubs were \$500 per dirty tub and a bad log. He believed these were two separate issues. Staff presented a comparison of fines with other states. Mr. Lloyd asked for a discussion on non health and safety fines. Mr. Hedges agreed with Mr. Lloyd's comments. He would like to see a change in the fines for an employee who worked in an unlicensed establishment, or an expired license. He noted some of the fines were out of whack and could be so high that some have chosen not to pay the fines and lose their license. Mr. Williams agreed and believed the fines should be reviewed. He did not believe the licensee should be responsible for the establishment owner. Ms. Crossett agreed the cases had to be looked at individually to determine intention. Mr. Hedges recommended a separate fine for being expired and one for not licensed. Ms. Underwood noted if a person was expired but renewed their license they should not be issued a citation. Our goal is to gain compliance. The intent was for unlicensed individuals who were never licensed and posed a willful violation.

Public Comment

Fred Jones of PBFC noted the foot spa fines were high but should be because they posed a consumer risk. He noted education needed to be increased in non-English speaking areas. The PBFC was planning major outreach programs.

Mr. Hedges reiterated there should be a bifurcating between fines for foot spas and incomplete logs. Also, a separate fine for working in an unlicensed establishment. He recommended a working group be formed to discuss these issues.

Mr. Lloyd recommended distinguishing between an expired license and unlicensed. Mr. Tyler noted the expired license was probably an administrative issue. He agreed a taskforce should be developed to discuss the issues and work with the DRC. Ms. Underwood clarified inspection reports are looked at individually, by the Cite and Fine Unit. If a report comes in concerning an incomplete log, the person is not fined. They are provided education and outreach.

**15. Agenda Item #15, Discussion on Continuing Education for Renewal License.**

Ms. Underwood noted this would require a statutory change. She has attended meetings with the California Cosmetology Association regarding this issue and it is moving forward. A chart outlining the continuing education requirements in 26 states was presented. Mr. Williams believed this was a very important issue and hoped it could move forward quickly. Mr. Tyler hoped the continuing education would focus on health and safety and the legislature would agree to pass the legislation.

Public Comment

Ms. Fran Handy agreed with continuing education and offered to join the taskforce to discuss this.

Linda Flores of the California Cosmetology Association supported continuing education. Especially for the safety of the consumer and cosmetologist. It would provide education on new techniques, sanitation rules, etc.

Gloria Luna expressed her support of continuing education.

D.J. Hamilton reminded the board to not forget about instructor qualifications. He believed it was brushed over in the past and considered no big deal. He disagreed. He believed the qualifications should total 30 hours/units to include 15 hours/units on how to teach.

Tamara expressed her strong support of continuing education. She recommended at least 16 hours every two years.

Fred Jones believed an assessment would be needed at the end of the continuing education. This may pose a burden to the staff, budget and the licensees. The Board would need to approve the educators. He recommended "ethics" be included and a percentage be designated to health and safety. Attendance at trade shows should account for something. He noted it may be tough to create this legislation because of the maintenance costs outweighing the benefits.

Jerry Gardner of Elite CMT provides continuing education via home study and internet. He stated the paperwork was minimal and efficient. In Texas, the company pays \$5 per exam and the state makes over \$2 million every biennium. This was a net amount after paying for extra staff. They download the information to each state every night on who has taken their course in the last 24 hours. The records are updated within 24 hours and paperless. He recommended the state of Texas be used a model. He believed they would share their software. The cost to the licensee would be \$21 every 2 years for 8 hours.

Carlene Graves of the California Cosmetology Association (CCA) offered her strong support of continuing education. The CCA has done extensive research and worked a long time on this subject. She offered the support of the CCA to staff.

Ms. Crossett agreed attendance at trade shows was important because cosmetologist were hands-on people. She believed there were many benefits to continuing education including saving the inspectors time.

**16. Agenda Item #16, Discussion on Verifying Reciprocity Applicants.**

Ms. Crossett cited a case of a student at her school who was only licensed on paper in another state and had never worked in the industry. She wondered if there was something the board could do to verify reciprocity applicants. The law states an applicant must be active 3 of the last 5 years.

Public Comment:

Fred Jones noted the forms were signed under penalty of perjury. He believed if the board got their house in order, they could go back to the legislature for further legislation.

**17. Agenda Item #17, Update on National Exam.**

Ms. Underwood noted the contract has been finalized to implement the national written exam. The anticipated date is April 1, 2009. Exams will be given in English, Spanish, and Vietnamese. Additional languages will be available in the future.

Public Comment:

Kirby Morris noted the study guide to the written exam was updated and based on educational questions. There are no trick questions to be fair to all levels of learners. New tests are done regularly to prevent knowing the questions in advance. Their goal is not to have a 100% pass rate. The goal is to ensure the students have the knowledge and ability to work without harming the public. He invited everyone to the regional meeting to be held in Sacramento. The company also has the practical exam which will be discussed in the future.

**18. Agenda Item #18, Discussion on Enacted Legislation Regarding Massage Therapy.**

Senate Bill 731 was signed into law by the Governor. The bill requires a nonprofit organization to certify massage therapists effective 9/1/09. Mr. Duke did not see a conflict for an esthetician who also did massage. He did not believe inspectors would look at massage rooms unless there was a complaint or activity under the board's jurisdiction. Mr. Hedges wondered if the bill could be piggybacked to come under the jurisdiction of the board. He was concerned about health and safety and proper training. Mr. Duke explained the bill required the oversight of a non-profit organization and would require a member selected by the DCA. Mr. Hedges hoped the board could ask the DCA to appoint one of the members to be on the oversight organization. This could prevent cross-treatment. The board and staff agreed.

**19. Agenda Item #19, Industry/Consumer Outreach Update.**

Ms. Underwood presented a list of events staff attended. Town hall meetings were scheduled with the first meeting focused with schools owners. The next meeting is focused with establishment owners and their responsibility. Workshops will be conducted in the afternoon specific to the nail industry.

Public Comment

A female member of the audience asked if the board had subject matter experts. Ms. Underwood noted it was on the website.

Fred Jones noted April 27, 2009 is the Annual Welcome to Our World Event.

**20. Agenda Item #20, Presentation the by Electrologists' Association of California.**

Agenda Item cancelled

**21. Agenda Item #21, PUBLIC COMMENT**

Derek Azarro, questioned the cancellation of his license. He noted that staff refused to discuss the cancellation laws in California. When he called in to ask for proof of training records, he was told they had been shredded. He was upset that the staff has gone against the law and shredded the documents. Mr. Duke noted the staff complied with the records retention schedule. Mr. Azarro noted Mr. Duke was exempt from continuing education due to being a public lawyer. He reiterated his training documents were shredded so he can no longer prove to another state that will allow licensure. He stated he must now go back to school and pass more tests to receive his documents. He has been prosecuted twice through the attorney general's office. He stated he lost his career of 25 years and his license. He stated the board was unwilling to budge on the renewal process in the state of California and have cancelled licenses by the thousands. He believes the staff violated a licensee's right of due process to ask for an appeal. Mr. Duke indicated any license is cancelled if not renewed within 5 years.

**22. Agenda Items for Next Meeting**

- Review and Approval of Disciplinary Review Committee Membership
- Qualifications for Approval of Schools
- Establishment Owner Qualifications

**CLOSED SESSION**

**23. Agenda Item #23, Appointment of the Executive Officer.**

**OPEN SESSION**

**24. Agenda Item #24, Report of the Closed Session.**

Mr. Tyler announced the board unanimously decided to reappoint Ms. Underwood as the Executive Officer.

**25. Agenda Item #15, Adjournment**

With no further business, the meeting was adjourned.